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Public Record

February 4, 2011

**BY ELECTRONIC FILING**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

Re: STB Finance Docket No. 35387, Ag Processing Inc A Cooperative—Petition for  
Declaratory Order

Dear Ms. Brown:

Attached for filing please find the Reply of Norfolk Southern Railway Company to  
Petitioners' Motion for Extension of Time to Reply to Norfolk Southern's Motion to  
Dismiss.

Thank you for your prompt assistance. If you have any questions, please feel  
free to contact me.

Sincerely,

*Christine Friedman*

Christine I. Friedman

Attachment

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35387**

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**AG PROCESSING INC A COOPERATIVE --  
PETITION FOR DECLARATORY ORDER**

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**REPLY OF NORFOLK SOUTHERN RAILWAY COMPANY  
TO PETITIONERS' MOTION FOR EXTENSION OF TIME  
TO REPLY TO NORFOLK SOUTHERN'S MOTION TO DISMISS**

**James A. Hixon  
John M. Scheib  
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Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510**

*Counsel for Norfolk Southern Railway  
Company*

**Dated: February 4, 2011**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35387**

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**AG PROCESSING INC A COOPERATIVE –  
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TO PETITIONERS' MOTION FOR EXTENSION OF TIME  
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On January 27, 2011, Norfolk Southern Railway Company ("Norfolk Southern") filed a Motion to Dismiss the Petitioners' challenge of NS Tariff 8002-A, Item 5000, which became effective August 4, 2010.<sup>1</sup> Prior to the change about which Petitioners have complained, Norfolk Southern's existing tariff permitted Norfolk Southern to charge its customers for overloaded cars irrespective of the cause. For many years, Norfolk Southern could and did assess such charges. The new language in the tariff benefits customers by providing, in Part D of Item 5000, a new five-day grace period for instances in which the overload is caused in part by weather. Provided any affected party (including, of course, Petitioners) can show that the car was not overloaded when it left the origin, Norfolk Southern will waive the charge for overloading and any applicable demurrage, storage, switching, or reweighing charge for the five-day period. If the overloaded condition is alleviated naturally during the five days, no further action is needed. If not, the customer will need to alleviate the overloaded condition. However, Norfolk Southern will not assess the charges that would have otherwise applied during the five-day period. Accordingly, because the addition of Part D was actually favorable to Petitioners, and because

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<sup>1</sup> The term "Petitioners" collectively refers to Ag Processing Inc A Cooperative, Bunge North America, Inc., Archer Daniels Midland Company, Louis Dreyfus Corporation, and Perdue Agribusiness, Inc.

Petitioners have never actually had an overloaded railcar on Norfolk Southern due in part to weather, Norfolk Southern has asked the Board to dismiss this action.

Accompanying its Motion to Dismiss, Norfolk Southern appropriately appended the Verified Statement of Rush Bailey, along with Norfolk Southern's internal weight tolerances for overweight railcars, as additional information relevant to the Board's consideration of the Motion. *See, e.g., Granite State Concrete Co., Inc. and Milford Bennington R.R. Co., Inc. v. Boston and Maine Corp. and Springfield Terminal Ry. Co.*, STB Docket No. 42083 (filed July 18, 2003) (Motion to Dismiss with Verified Statement filed in support); *Cross Oil Ref. & Mktg., Inc. v. Union Pacific R.R. Co.*, STB Finance Docket No. 33582 (served Oct. 27, 1998) (Board decision referring to an affidavit with confidential exhibits that was filed in support of a motion to dismiss). Without these internal tolerances, Norfolk Southern would be stopping a train for *any* car in excess of the published limit, even if it exceeded the applicable limit by as little as ten pounds, which would result in increased charges for shippers and increased delays for other customers with shipments on the same train. Norfolk Southern applies these internal weight tolerances as a *benefit* to shippers, overlooking otherwise applicable overload penalties for cars in excess of the published weight limits. Because the efficacy of these internal tolerances depends upon their confidentiality, Norfolk Southern filed an accompanying Motion for a Protective Order with the Board.

According to their February 2, 2011 Filing, the Petitioners do not oppose Norfolk Southern's Motion for a Protective Order.<sup>2</sup> Rather, the essence of the Petitioners' Filing is to request an extension of time for filing a reply to Norfolk Southern's Motion to Dismiss, with the deadline occurring twenty days after counsel for Petitioners receives the internal weight

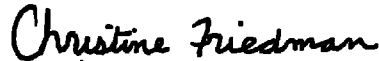
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<sup>2</sup> The term "Filing" refers to the document entitled *Reply of Petitioners to Motion for Protective Order of Norfolk Southern Railway Company and Motion for Extension of Time to File Petitioners' Reply to Norfolk Southern's Motion to Dismiss*, filed on February 2, 2011 with the Board.

tolerances. Norfolk Southern does not oppose this extension and will provide Petitioners' counsel with these internal tolerances, if and when the Board issues the Protective Order, upon counsel's signing of the appropriate undertaking for the receipt of "highly confidential" information.<sup>3</sup>

Norfolk Southern respectfully requests that the Board grant its unopposed Motion for a Protective Order and does not oppose the extension of time sought by Petitioners.

Respectfully submitted,



James A. Hixon  
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Greg E. Summy  
Christine I. Friedman  
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Three Commercial Place  
Norfolk, VA 23510

*Counsel for Norfolk Southern Railway  
Company*

Dated: February 4, 2011

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<sup>3</sup> Norfolk Southern presumes that Petitioners' counsel will sign the undertaking within a reasonable time upon issuance of the Protective Order by the Board.

**CERTIFICATE OF SERVICE**

I, Christine I. Friedman, certify that on this date a copy of the Reply of Norfolk Southern Railway Company to Petitioners' Motion for Extension of Time to Reply to Norfolk Southern's Motion to Dismiss, filed on February 4, 2011, was served by email or by first-class mail, postage prepaid, on all parties of record, specifically:

Andrew P. Goldstein  
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(202) 775-5560

Christine Friedman  
Christine I. Friedman

Dated: February 4, 2011